Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1993

PAUL MELKONIAN,

Petitioner,

vs.

JACQUELINE CARLE MELKONIAN,

Respondent.

Petition For Writ Of Certiorari To The District Court Of Appeal Of Florida For The Third District

PETITION FOR WRIT OF CERTIORARI

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36 pp

QUESTIONS PRESENTED

Where the United States Supreme Court has declared that gender specific alimony statutes violate an individual's Constitutional right to equal protection, may a state court continue to enforce and apply the gender specific presumptions of a judgment predicated upon such gender specific alimony statutes?

Does an individual's Constitutional right to due process and equal protection require that a state court support its opinion by citing legal authority focused on the facts and arguments presented?

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No. _____

In The

Supreme Court of the United States

October Term, 1993

PAUL MELKONIAN,

Petitioner,

vs.

JACQUELINE CARLE MELKONIAN,

Respondent.

Petition For Writ Of Certiorari To The District Court Of Appeal Of Florida For The Third District

PETITION FOR WRIT OF CERTIORARI

Petitioner, Paul Melkonian, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the District Court of Appeal of Florida for the Third District affirming the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida's orders dated June 25, 1993 and June 2, 1993. The order dated June 25, 1993 determined that Fla. R. Civ. P. 1.540 should be used as a time bar to deny petitioner's Constitutional right to equal protection and the order dated June 2, 1993 affirmed a General Master's Report which is false on its face.

PREFACE

A default Final Judgment of Divorce was entered April 15, 1970 after a March 11, 1970 Motion to Set Aside Default and Motion for Leave to File Answer was denied on March 19, 1970. Ms. Melkonian was 33 years old and employed as full-time secretary prior to the marriage. Mr. Melkonian was 35 years old and established as a civil engineer. They knew each other less than a year before being married. Two children resulted from the relationship, Kyle Steven Melkonian and Amie Diana Melkonian. The marriage endured approximately 7 years. All alimony and child support required by the court were paid over a period in excess of 22 years, the youngest child leaving the former wife's residence approximately 8 years earlier.

Petitioner is proceeding pro se and as such his pleadings are to be held to " . . . less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 451 (1972).

OPINIONS BELOW

The decision of the Supreme Court of Florida is reported as *Melkonian v. Melkonian*, ___ So.2d ___ (Fla. 1994), and appears in Appendix A. The unpublished decision of the District Court as well as its judgment reported as *Melkonian v. Melkonian*, 626 So.2d 285 (Fla. 3d 1993) appear in Appendix B. The unpublished orders of the Circuit Court appear in Appendix C. The Report of the General Master appears in Appendix D. The unpublished

order and the Final Judgment of Divorce of the Circuit Court appear in Appendix E.

JURISDICTION

The District Court's opinion was rendered November 2, 1993. Relying upon Fla. R. App. P. 9.330(a) and 9.420(d) the following motions were filed by petitioner on November 22, 1993: Rehearing and Clarification, Declaratory Judgment, and Certification. Petitioner also filed a Motion for Relief from Mandate pursuant to Fla. R. Civ. P. 1.540(a) and 1.540(b)(1) on November 22, 1993. A timely Notice of Appeal was filed by petitioner on December 1, 1993, in accordance with Fla. R. App. P. 9.120(b), requesting that the Supreme Court of Florida exercise its discretionary jurisdiction under Article V, Section 3(b), Florida Constitution (1980). On December 3, 1993 the District Court denied the above referenced motions. A Jurisdiction Brief was served by petitioner on December 10, 1993 within the time constraints of Fla. R. App. P. 9.120(d). On March 21, 1994 the Supreme Court of Florida declined to exercise its discretionary jurisdiction and dismissed the appeal. Petitioner did not file a motion for rehearing or clarification in the Supreme Court of Florida because such motions are not permitted under Fla. R. App. P. 9.330(d).

The United States Supreme Court's discretionary jurisdiction is sought under Title 28, U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Constitution, Article VI, § 2, providing:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The United States Constitution, Amendment XIV, § 1, providing in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Florida Statutes Divorce § 61.08 (1969):

> Alimony on judgment of divorce. – In every judgment of divorce in an action by the wife, the court shall make such orders about maintenance, alimony and suit money of the wife, or any allowance to be made to her, and if any, the security to be given therefor, as from the circumstances of the parties and nature of the case is equitable; but no alimony shall be granted to an adulterous wife. In any award of permanent alimony the court has jurisdiction to order periodic payments or payment in lump sum or both.

STATEMENT OF THE CASE

On April 5, 1993 petitioner filed an Equal Protection Motion in Bar to bar prospective enforcement of the Final Judgment of Divorce entered in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida on the 15th day of April 1970. The Motion was properly filed in accordance with Fla. R. Civ. P. 1.540(b) since there is no time limitation where the judgment is void or where the judgment has prospective application and equity should now require relief from its present enforcement. *DeClaire v. Yohanan*, 453 So.2d 375 (Fla. 1984). A copy of Rule 1.540 Relief From Judgment, Decrees, or Orders is provided in Appendix F. When a party is seeking relief by motion based on extrinsic or intrinsic fraud under Fla. R. Civ. P. 1.540(b) the motion must be made within one year after the judgment is entered. *Champion v. Champion*, 525 So.2d 999 (Fla. 5th DCA 1988).[1] In Florida the Rules of Civil Procedure do not operate to deny or infringe on an individual's Constitutional rights. *State v. Garcia*, 229 So.2d 236 (Fla. 1969); *Lundstrom v. Lyon*, 86 So.2d 771 (Fla. 1956).

The Final Judgment of Divorce in Melkonian v. Melkonian awarded the former wife a lifetime entitlement to alimony under § 61.08, Fla. Stat. (1969). The

---

[1] Although cited by the Circuit Court in its order dated June 25, 1993 petitioner never raised the question of extrinsic or intrinsic fraud in his Equal Protection Motion In Bar. At an earlier unrelated hearing financial affidavit fraud was raised by petitioner, but in Florida as the "law" is being applied to petitioner financial affidavit fraud is irrelevant.

gender biased classification contained in the Florida Statutes 1969 Divorce legislation entitled only wives to alimony. The gender biased presumption of the law is that only a former husband is financially obligated to his former wife and this "obligation" can be adjudicated as permanent. The former wife on the other hand has no obligation whatsoever to her former husband. The Florida Statutes 1971 Dissolution of Marriage legislation does not discriminate on gender specific classifications and the presumptions contained in Final Judgments of Dissolution are non-discriminatory. The benefits and presumptions of the gender neutral Dissolution of Marriage do not apply to former husbands adjudicated under the gender biased Divorce legislation. *Taplin v. Taplin*, 341 So.2d 1064 (Fla. 3d DCA 1977); *Mosher v. Mosher*, 321 So.2d 450 (Fla. 2d DCA 1975); *Carmel v. Carmel*, 282 So.2d 6 (Fla. 3d DCA 1973).

The United States Supreme Court has ruled that a gender specific divorce statute which limited the award of alimony to females violates the Constitutional right to equal protection provided for in Amendment XIV, Sec. 1, United States Constitution. *Orr v. Orr*, 440 U.S. 267 (1979). In *Reed v. Reed*, 404 U.S. 71 (1971) the United States Supreme Court ruled that an Idaho Administrative Code that gave preference to males in the naming of administrators was unconstitutional, in violation of the right to equal protection. In Florida the Court has an obligation to strike down clearly unconstitutional statutes. *State v. City of Largo*, 149 So. 420 (Fla. 1933). "If the statute is invalid the judgment is void and may be collaterally attacked." *Kellogg-Citizens Nat. Bank v. Felton*, 199 So. 50 (Fla 1940). A statute or Judgment in conflict with the Constitution, not

merely as to form, is void and will not be enforced by the Courts. *State Board of Administration v. Pasco County*, 22 So.2d 387 (Fla. 1945); *State v. Lee*, 1 So.2d 193 (Fla. 1941); *City of Winter Haven v. A.M. Klemm & Son*, 181 So. 153 (Fla. 1938); *St. Paul Trust & Savings Bank v. American Clearing Co.*, 291 F. 212 (S.D.Fla. 1923); *Yaeger v. State*, 83 So. 525 (Fla. 1920). In *In Re Estate of Reed*, 354 So.2d 864 (Fla. 1978), the Supreme Court of Florida stated: "We agree with the appellant's claim that sex-based classification is irrational and denies equal protection under the Florida and United States Constitutions."

The Final Judgment of Divorce in Melkonian v. Melkonian is clearly based upon an unconstitutional state statute and the gender biased presumptions of that judgment are contrary to Constitutional law and as such, under Florida law, there is no legal basis for continuing enforcement. Concerning the dicta in *Orr v. Orr* cited in Circuit Court's order, here is what the Supreme Court of the United States actually stated: "[S]ince the state court deemed the federal constitutional question to be before it, we could not treat the decision below as resting upon an adequate and independent state ground even if we were to conclude that the state court **might** (emphasis added) properly have relied upon such a ground to avoid deciding the federal question."

The Circuit Court's Order Denying Petitioner's Equal Protection Motion in Bar dated the 25th day of June, 1993 was properly appealed pursuant to Fla. R. App. P. 9.110. No rehearing was sought nor was a rehearing required under Fla. R. Civ. P. 1.530. The District Court's judgment is unsupported in law or in fact: Fla. R. Civ. P. 1.540 is **not** a time bar and Chapter 61 Divorce § 61.08, Fla. Stat.

(1969) is **neither** Constitutional nor is it **arguably** gender biased. Under the guidelines set forth in *Orr v. Orr* and *Reed v. Reed* there is absolutely **no question** that § 61.08, Fla. Stat. (1969) is gender biased.

The Circuit Court Order dated the 2nd day of June, 1993 affirmed the Report of the General Master dated March 15, 1993. Petitioner properly filed a Notice of Exceptions in accordance with Fla. R. Civ. P. 1.490(c) on March 24, 1993 asserting that his Constitutional rights were being denied. The Report of the General Master is false on its face as to the type of judgment entered and the type of payments at issue. Both the type of judgment entered and the type of payments are legally and equitably significant. The March 15, 1993 Report of the General Master: " . . . as court-ordered in the Final Judgment of Dissolution of marriage between the parties." There is no gender neutral Final Judgment of Dissolution of the parties, but rather a gender biased Final Judgment of Divorce. The applicable statutes as well as the presumptions of the two types of judgments are light years apart. The Report of the General Master repeatedly uses the term "support" and relies upon Florida Statutes which are intended to collect "support". Under statute and case law alimony is only considered "support" when the children or a child are residing with the former spouse who is receiving the alimony. *HRS v. Reed*, 560 So.2d 426 (Fla. 4th DCA 1990); *Schorb v. Schorb*, 547 So.2d 985 (Fla. 2d DCA 1989). As previously stated the last child left the residence of the former spouse approximately eight years earlier. At the May 18, 1993 hearing the Circuit Judge stated: "I could call you an obligor, a payor, whatever I wish to call you." (TR pp. 20-21). At the same hearing the

Court erroneously refers to "support the nine other children". (TR p. 15). For the record there was only a duty to support two children which petitioner did.

The order of the Circuit Court dated June 2, 1993 affirms the Report of the General Master without correction and the judgment of the District Court was a mere formal affirmation that the laws are meaningless. In summation, the Courts are denying petitioner's Constitutional right to due process and equal protection.

REASONS FOR GRANTING THE WRIT

The Petition for Writ of Certiorari should be granted for the following reasons:

1. The United States Constitution, Article VI, § 2

2. The United States Constitution, Amendment XIV, § 1

3. *Doe v. Supreme Court of Florida*, 734 F. Supp. 981 (S.D.Fla. 1990). The State Court has no concern for protecting the Constitutional rights of non-lawyers. Except for the oversight provided by the Federal Courts, the State Court is a law unto themselves. Until such time as the primary of the Constitution is reasserted in Florida, the need for the watchful eye and stewardship of the Federal Courts is needed as a check on the State Court's power.

4. Petitioner is keenly aware that any decision – pro, con, or indifferent – rendered by this Supreme Court as regards Melkonian v. Melkonian will have minimal impact on Divorce cases, already adjudicated or to be

adjudicated, in the State Court and the other States or Territories. The case is unique and time and timing have blunted any beneficial use that it could have provided in Divorce cases. As a whole, it has national impact: From its inception in 1970 Melkonian v. Melkonian has been a total contradiction of the First Commandment of American Jurisprudence – "We are a Nation of Laws and Not of Men!"

Are we to be adjudicated by judges acting under the law or under the color of law?

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgment of the District Court in this matter. If the Supreme Court of the United States elects not to invoke its discretionary jurisdiction at the present time, it is requested that a writ issue to the District Court to support its judgment with reference to the facts and the law or any other relief this Court deems appropriate.

This 14th day of June, 1994.

Respectfully submitted,

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APPENDIX A

Supreme Court of Florida

MONDAY, MARCH 21, 1994

PAUL MELKONIAN, Petitioner/Appellant, v. JACQUELINE CARLE MELKONIAN, Respondent/Appellee.	CASE NO. 82,833 District Court of Appeal, 3rd District – No. 93-1533

This case having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that the appeal is dismissed and the petition for review is denied.

OVERTON, MCDONALD, SHAW, KOGAN and HARDING, JJ., concur

A True Copy

TEST:
/s/ Sid J. White
Sid J. White
Clerk,
Supreme Court
[SEAL]

H

cc: Hon. Louis J. Spallone, Clerk
Hon. Harvey Ruvin
Hon. Carol Gersten
Mr. Paul Melkonian
Mr. Harry James Averell
Hon. Robert A. Butterworth

APPENDIX B

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 1993

DECEMBER 3, 1993

PAUL MELKONIAN,	**	CASE NO. 93-01533
Appellant(s),	**	LOWER TRIBUNAL NO. 70-665
vs.	**	
JACQUELINE CARLE MELKONIAN,	**	
Appellee(s).	**	

Upon consideration, appellant's motions for relief from mandate, for declaratory judgment, certification, rehearing and clarification are hereby denied. Schwartz, C.J., and Barkdull and Ferguson, JJ., concur.

A True Copy

ATTEST:

LOUIS J. SPALLONE

Clerk District Court of Appeal, Third District

[SEAL]

By: /s/ Illegible
Deputy Clerk

cc: Paul Melkonian /NB

Harry Averell

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 1993

DECEMBER 3, 1993

PAUL MELKONIAN, **
**
Appellant ** CASE NO. 93-01533
vs. **
**
JACQUELINE CARLE MELKONIAN, **
**
Appellee. **

Opinion filed November 2, 1993.

An Appeal from the Circuit Court for Dade County, Carol Gersten, Judge.

Paul Melkonian, in proper person.

Harry James Averell, for appellee.

Before SCHWARTZ, C.J., and BARKDULL and FERGUSON, JJ.

PER CURIAM.

We have carefully considered, but cannot agree with the appellant's earnest and sincere argument that the fact that the pre-1971 Florida divorce statute was arguably

gender-biased invalidates every alimony award otherwise properly entered under the provisions of that law.

Affirmed.

APPENDIX C

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NO. 70-00665 FC 29

IN RE: The Marriage Of:

PAUL MELKONIAN,

Petitioner,

and

JACQUELINE MELKONIAN,

Respondent.

_____/

ORDER DENYING PETITIONER'S EQUAL PROTECTION MOTION IN BAR

THE CAUSE came on to be heard on June 16, 1993 on Petitioner's Equal Protection Motion In Bar, the Court hearing argument from the parties and counsel of record, and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED

1. That said Motion is DENIED.

Mr. Melkonian's Equal Protection Motion in Bar is time barred under Florida Rules of Civil Procedure Rule 1.540. Absent an independent action for relief of fraud on the Court, a motion to set aside a final judgment of dissolution must be brought within one year of the judgment. *Champion v. Champion,* 525 So.2d 999 (Fla. 5th DCA 1988). A state court may decline to hear tardily raised

constitutional challenges of a divorce decree already entered without constitutional objection, so long as the state's prior proceedings permitted an opportunity to assert the federal right. *Orr v. Orr*, 440 US 267 (1979). Accordingly, under Rule 1.540, Fla. Rule Civ. Pro., Mr. Melkonian's opportunity to set aside the Final Judgment of Dissolution has long passed and it would be inequitable to consider it now.

Additionally, it would be error for this Court to retroactively apply any post 1970 Florida Statutes to Mr. Melkonian's alimony obligation under the 1970 Final Judgment of Divorce. See *Taplin v. Taplin*, 341 So.2d 1064 (Fla.3rd DCA 1977).

DONE AND ORDERED in Chambers Dade County, Florida this 25 day of June, 1993.

JUDGE CAROL R. GERSTEN
CAROL R. GERSTEN
Circuit Judge

Copies to:
Parties and
Counsel of Record

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

FLORIDA BAR #813745

FAMILY DIVISION

CASE NO. 70-665-FC-29

JACQUELINE CARLE MELKONIAN,

Petitioner/Wife,

vs.

PAUL MELKONIAN,

Respondent/Husband,

_____/

ORDER

THE CAUSE having come on to be heard on May 18, 1993 on Respondent/Husband, PAUL MELKONIAN, Motion to Vacate, Motion to Disqualify and Motion on Exceptions to Report of General Master and the Court having heard testimony of Respondent/Husband and Counsel for Petitioner/Wife and being otherwise fully advised in the premises it is hereby

ORDERED and ADJUDGED that:

1. Respondent/Husband's Motion to Vacate is granted. That Respondent/Husband's Motion to Vacate the Order of General Master is granted and that it was prematurely entered and is vacated for purposes of this hearing.

2. Respondent/Husband's Exceptions to the Report of General Master are hereby denied and the Court having reviewed the transcript of the hearing before the General Master and having taken testimony of the Respondent/Husband hereby enters an Order affirming the Report of the General Master.

3. The Respondent/Husband, PAUL MELKONIAN, will have an extension until June 1, 1993 in order to pay the regular alimony and any funds that are in arrears until such date.

DONE and ORDERED in Chambers at Miami, Dade County, Florida, this ___ day of JUN 02 1993, 19___.

JUDGE CAROL R. GERSTEN
CIRCUIT COURT JUDGE

cc: MARGARITA FERNANDEZ & ASSOCIATES, P.A.
Attorney for Petitioner/Former Wife
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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA FAMILY DIVISION

JACQUELINE C. MELKONIAN,
Petitioner

and

PAUL MELKONIAN,
Respondent

_____/

CASE NO. 70-665-FC-29

ORDER ON REPORT OF GENERAL MASTER

THE CAUSE came on to be heard upon the report of General Master, and the undersigned having considered the findings and recommendations therein, and being advised that pursuant to rule 1.1490(h) and 1.491(f) Florida Rules of Civil procedure that no exceptions to the Report of General Master have been filed within the ten (10) day period provided by the rule, it is thereupon,

ORDERED AND ADJUDGED:

1. That the report of General Master dated MAR 15 1993, 1993, be and the same is hereby ratified and approved.

2. That the parties herein are ordered to abide by all the findings and recommendations contained in said Master's Report; that the Court adopts each and every recommendation contained therein as this Court's Order.

3. That all prior Orders not inconsistent herewith are hereby reaffirmed.

DONE AND ORDERED at Miami, Dade County, Florida on this 12 day of April, 1993.

CAROL R. GERSTEN
Circuit Court Judge

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APPENDIX D

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

FAMILY DIVISION

IN RE: THE MARRIAGE OF
JACQUELINE C. MELKONIAN,
Petitioner
and
PAUL MELKONIAN,
Respondent.
_____/

CASE No.
70-665 FC 29

REPORT OF GENERAL MASTER AND NOTICE OF FILING

THIS CAUSE came on before the undersigned General Master on February 17, 1993, pursuant to prior order of Referral, upon the Petitioner/former Wife's Motion for Contempt and Entry of Income Deduction Order. The hearing was attended by counsel for the former Wife and by the former Husband, who appeared *pro se*. The former Wife/Petitioner, who resides in Bel Air Beach, Florida, had previously been given permission to appear telephonically and did participate in the hearing by telephone.

Having heard the testimony of the parties and argument of Wife's counsel and being otherwise advised in the premises, the undersigned makes the following findings:

1. The Wife testified that the Husband had last made a court=ordered [sic] alimony payment to her in June, 1992, although he had previously paid his alimony

obligation. She further testified that some twelve (12) years ago the former Husband had sought to terminate his alimony and child support obligations, unsuccessfully.

2. The Husband testified that he had in fact ceased making payments to the Wife in June, 1992.

3. The evidence was uncontroverted that the Husband is presently in arrears in his support obligation to the Wife in the total amount of $3,200.00, as of February 7, 1993.

4. The undersigned finds that the former Husband had at all times material hereto and presently has the ability to pay the sums awarded, but has willfully failed and refused to do so, as court-ordered in the Final Judgment of Dissolution of the marriage between the parties.

WHEREFORE, the undersigned General Master recommends entry of an Order as follows:

A. Former Wife's Motion for Contempt should be granted and the former Husband found to be in willful contempt of the his [sic] court-ordered support obligation.

B. Former Husband should be sentenced to a term of 30 days incarceration in the Dade County jail, as and for sanction for his willful contempt.

C. Former Husband shall be allowed to purge himself of his contempt by paying to the former Wife the $3,200.00 arrearage owed to her by him, commencing with a $200.00 first payment to be made on or before March 19, 1993, and subsequent support payments of $200.00 per month until the entire $3,200.00 arrearage is

paid in full. Such payments shall be in addition to his on going support payments.

D. The Husband is specifically found to have the ability to make the purge payment set forth above.

E. The Court shall reserve jurisdiction on the former Wife's request for attorney's fees and costs.

WHEREFORE, the undersigned General Master files this Report with the Clerk of Court and recommends entry of an Order approving and ratifying it.

DATED at Miami, Dade County, Florida on Mar. 15, 1993.

/s/ Helen T. Erstling
HELEN T. ERSTLING,
GENERAL MASTER

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APPENDIX E

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

No. 70-665 GORDON

JACQUELINE CARLE MELKONIAN,

Plaintiff

vs.

PAUL MELKONIAN,

Defendant

ORDER DENYING MOTION TO SET ASIDE DEFAULT

THIS CAUSE coming on to be heard before me upon Defendant's Motion to Set Aside Default and having heard argument of counsel and being otherwise fully advised in the premises, it is thereupon

ORDERED and ADJUDGED that Defendant's Motion to Set Aside Default be, and the same is hereby denied.

DONE and ORDERED in Chambers at Miami, Florida, this 19th day of March, 1970.

/s/ Harold R. Vann
CIRCUIT JUDGE

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

No. 70-665 GORDON

JACQUELINE CARLE MELKONIAN, Plaintiff vs. PAUL MELKONIAN, Defendant	Recorded this 16 day of Apr. A.D. 1970 in Circuit Court Minute Book and Page noted below. E.B. LEATHERMAN Clerk Circuit Court By J. Diblin Deputy Clerk

FINAL JUDGMENT OF DIVORCE

THIS CAUSE having come on to be heard before me upon the Complaint of the Plaintiff, a Default having been entered against the Defendant for his failure to answer or otherwise plead to the Complaint within the time allowed, due and proper personal service having been had upon the Defendant, and the Defendant and counsel having been present at this hearing and upon hearing of the testimony in this cause as well as an examination of the proceedings on file and it appearing that all proceedings have been duly and properly had and the Court being duly and fully advised in the premises, upon consideration thereof, it is hereby

ORDERED and ADJUDGED:

1. That this Court has jurisdiction of the subject matter and of the parties to this cause, that the equities are with the Plaintiff and that the Defendant is guilty of extreme cruelty to the Plaintiff.

2. That the Plaintiff is hereby granted a divorce of and from the Defendant; that the marriage between the Plaintiff and the Defendant be, and the same is hereby dissolved; that the said parties and each of them are hereby divorced from each other, a vinculo matrimonii; and that the said parties and each of them are hereby forever freed from the bonds of matrimony heretofore existing between them.

3. That the Plaintiff is awarded full, complete and permanent care, custody and control of the minor children of the parties, KYLE STEVEN MELKONIAN and AMIE DIANA MELKONIAN, subject to the right of visitation of the Defendant to have the children with him from nine (9:00) o'clock a.m. to six (6:00) o'clock p.m. on Saturdays.

4. That the Defendant will pay the Plaintiff the sum of $400 per month as and for permanent alimony until the Plaintiff shall remarry.

5. That the Defendant will pay to the Plaintiff the sum of $100 per month per child for the care, support and maintenance of each child until said child shall reach his or her majority.

6. That the Defendant shall keep up and maintain all insurance policies and hospitalization policies presently in force with the beneficiaries to remain the same.

7. That the Defendant shall pay all doctors and dental bills not covered by hospitalization policies for the two children, provided that he is informed of the need and has an opportunity to choose the physician.

8. That the Defendant will pay to the attorneys for the Plaintiff, SIMONS, SIMONS & SIMONS, the sum of $400 as attorneys' fees incurred by the Plaintiff, plus costs in the sum of $53.50.

DONE and ORDERED in Chambers at Miami, Dade County, Florida, this 15 day of April, 1970.

/s/ J. Fritz Gordon
CIRCUIT JUDGE

APPENDIX F

RULE 1.540 RELIEF FROM JUDGMENT, DECREES, OR ORDERS

(a) Clerical Mistakes. Clerical mistakes in judgments, decrees, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal such mistakes may be so corrected before the record on appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, decree, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) that the judgment or decree is void; or (5) that the judgment or decree has been satisfied, released, or discharged, or a prior judgment or decree upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or decree should have prospective application. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than 1 year after the judgment, decree, order, or proceeding was entered or

taken, except that there shall be no time limit for motions based on fraudulent financial affidavits in marital cases. A motion under this subdivision does not affect the finality of a judgment or decree or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, decree, order, or proceeding or to set aside a judgment or decree for fraud upon the court.

Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished, and the procedure for obtaining any relief from a judgment or decree shall be by motion as prescribed in these rules or by an independent action.

Amended July 16, 1992, effective Jan. 1, 1993 (604 So.2d 1110).

Committee Notes

1992 Amendment. Subdivision (b) is amended to remove the 1-year limitation for a motion under this rule based on fraudulent financial affidavits in marital cases.